

Freedom of Information Act 2000 (Section 50) Environmental Information Regulations 2004

Decision Notice

Date: 5 October 2009

Public Authority: Department for Transport
Address: Zone 1/28
Greater Minster House
76 Marsham Street
London
SW1P 4DR

Summary

The complainant made a request to the Department for Transport (the "DfT") for a copy of all the previous draft versions of the 2007 Southern Alignment Options Report between Liverpool Street and Whitechapel Stations, together with the names of the originators of those reports. The DfT refused to disclose this information, citing sections 21, 35 and 40 of the Act. After carrying out an internal review the DfT upheld its previous use of sections 21 and 35. It also noted that the draft versions of the report may be environmental information and if so would be exempt under regulation 12(4)(d) of the Environmental Information Regulations 2004. During the investigation of the case the DfT disclosed the draft versions of the report. Therefore the Commissioner has not gone on to reach a view on its use of regulation 12(4)(d). However, it continued to withhold the names of the originators, citing regulation 13. After investigating the case the Commissioner decided that regulation 13 did not provide an exception from disclosure, and therefore the names of the originators should be disclosed. He also found that the DfT had failed to comply with the requirements of regulations 5(1), 5(2) and 14.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.
2. The Environmental Information Regulations (EIR) were made on 21 December 2004, pursuant to the EU Directive on Public Access to Environmental Information (Council Directive 2003/4/EC). Regulation 18 provides that the EIR

shall be enforced by the Commissioner. In effect, the enforcement provisions of Part 4 of the Act are imported into the EIR.

Background

3. By way of background, this request was made in relation to the Crossrail project. Crossrail is a project to build a major new railway route through and under London. The Crossrail line is based around a new pair of east-west tunnels under central London connecting the Great Western Main Line near Paddington to the Great Eastern Main Line near Stratford. An eastern branch diverges at Whitechapel, running through Docklands and emerging at Custom House on a disused part of the North London Line, then under the River Thames, to Abbey Wood. Trains will run from Maidenhead and Heathrow in the west to Shenfield and Abbey Wood in the east, taking over the existing stopping services on those routes.¹

The Request

4. The complainant wrote to the DfT on 21 December 2007 and made the following request:

“Please supply all the previous draft copies of the 2007 Southern Alignment Options Report between Liverpool Street and Whitechapel Stations and provide the name of the originator of each support as stated in the report...”

For ease of reference the Southern Alignment Options Report between Liverpool Street and Whitechapel Stations will be referred to as the ‘Report’ throughout the rest of this Notice.

The complainant duplicated this request on 22 December 2007. In this second letter he listed the different versions of the Report (revisions A1, B1, C1, C2, C and D) and the initials of the originator of each version of the Report, which had previously been provided to him.

5. This request focuses on information surrounding the route of the Crossrail tunnels between Liverpool Street Station and Whitechapel Station. At an earlier stage the DfT had provided the complainant with a copy of the final draft (Revision C) and the final version (Revision D) of the Report. Therefore the outstanding revisions were A1, B1, C1 and C2.
6. The DfT responded in a letter dated 21 January 2008. It informed the complainant that a substantial amount of the information in the requested draft versions of the

¹ Further information on the Crossrail project can be found on the DfT website, at <http://www.dft.gov.uk/pgr/rail/pi/crossrail/>

Report was included in Supplementary Environmental Statement 3 (SES3), published in November 2006. It believed that this information was exempt under section 21.

7. The DfT also cited section 35, arguing that disclosure of the draft versions of the Report could prejudice the policy-making process. It did not state which part of section 35 it was relying upon, nor did it say why it believed that the public interest in maintaining the exemption outweighed the public interest in disclosure. The DfT clarified that it was not citing this exemption in relation to the factual or statistical information contained in the drafts, as it believed that this information was exempt under section 21.
8. Finally, in relation to the names of the originators, the DfT cited section 40 of the Act. It stated,

“The originators of each draft version of the report are employees of Mott MacDonald, a private sector company that is contracted to Cross London Rail Links. Given these circumstances, it is my opinion that the individuals concerned would not expect their names to be in the public domain and, therefore, it would be unfair to do so having regard to the data protection principles set out in the Data Protection Act 1998. This information is therefore exempt under section 40...”

The DfT informed the complainant of his right to request an internal review, and his right to complain to the Commissioner.

9. On 27 January 2008 the complainant wrote to the DfT and requested an internal review.
10. The DfT carried out an internal review and provided a response in a letter dated 29 February 2008. In this it upheld its use of sections 21 and 35. It also noted that it was possible that the requested information fell under the definition of environmental information, as set out in the EIR. If so, the DfT stated that the draft versions of the Report were exempt under regulation 12(4)(d). However, the internal review did not refer to the names of the originators.

The Investigation

Scope of the case

11. The complainant initially contacted the Commissioner on 6 March 2008 to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the DfT's refusal to provide the previous draft copies of the Report, namely revisions A1, B1, C1 and C2.
12. The Commissioner wrote to the complainant on 5 February 2009 and informed him that the case had been assigned to a case officer. In this letter he stated that

the focus of the complaint appeared to be the DfT's refusal to disclose all the draft version of the Report, together with the name of the originator of each draft versions of the Report. He noted, however, that the complainant had not directly referred to the DfT's use of section 40 in his initial complaint to the Commissioner, and therefore asked him to confirm whether he was also complaining about its refusal to provide the name of the originator of each draft version of the Report.

13. After receiving no response the Commissioner wrote to the complainant again on 24 February 2009 and informed him that unless he heard from him by 11 March 2009 he would treat the complaint as withdrawn.
14. The complainant wrote to the Commissioner on 26 February 2009 and confirmed that he wanted to complain about both the DfT's refusal to disclose the draft versions of the Report (A1, B1, C1 and C2), and its refusal to provide the named person in each of the draft versions under section 40.

The Commissioner has interpreted the phrase 'the originators of each support' as a request for the originator of each draft version of the Report. This interpretation is based on the DfT's interpretation of this aspect of the request (as set out in its refusal notice). In reaching this view the Commissioner has also noted that the complainant did not question the DfT's interpretation of this aspect of the request. Nor has the complainant criticised the Commissioner's interpretation, as set out at paragraph 12 above.

15. During the investigation of the case the DfT disclosed the draft versions of the Report (A1, B1, C1 and C2) to the complainant. Therefore the Commissioner has not considered this aspect of the complaint any further. This Notice focuses on the DfT's refusal to disclose the names of the originators.

Chronology

16. The Commissioner wrote to the DfT on 3 March 2009 and asked to be provided with a copy of the withheld information. This was provided on 11 March 2009.
17. The Commissioner wrote to the DfT on 18 March 2009 and stated that after considering the withheld information he had formed the view that it was environmental information. He noted that at internal review the DfT had not referred to the names of the originators, and asked it whether it still believed that this information should be withheld. If so, he also asked it to provide submissions as to why it believed that the names of the originators were exempt from disclosure.
18. Having received no response the Commissioner contacted the DfT again on 27 April 2009, asking for a response to his previous letter. He drew the DfT's attention to his power to issue an Information Notice under section 51 of the Act.
19. The DfT responded in a letter dated 6 May 2009. It confirmed that it believed that the names of the originators were exempt under regulation 13(2)(a)(i) – as disclosure would be in breach of the 1st principle of the Data Protection Act 1998

- (the "DPA"). It also provided further arguments to support its use of this exception.
20. In a letter dated 22 May 2009 the DfT informed the Commissioner that after reconsidering the previously withheld information it was now prepared to disclose the draft versions of the Report. It confirmed that this information had been sent to the complainant.
 21. The Commissioner wrote to the complainant on 27 May 2009 and informed him that following the disclosure of the draft versions of the Report the only outstanding information was the names of the originators. He set out the details of the DfT's arguments in support of its use of regulation 13, and asked the complainant whether he wished to continue with his complaint.
 22. The complainant wrote to the Commissioner on 5 June 2009 and informed him that he did wish to continue with his complaint. He also provided further arguments in relation to the DfT's use of regulation 13.
 23. After considering the complainant's further submissions the Commissioner wrote to the DfT again in an email dated 12 June 2009. He informed the DfT that after reconsidering its use of regulation 13 he was not convinced by its arguments, and set out why he believed that the names of the originators should be disclosed. He drew the DfT's attention to information that was already in the public domain that related to the originators. In particular he noted that the DfT had previously disclosed a Crossrail document under the Act which showed the names of the originators of that document. The Commissioner has commented on this further at paragraphs 6 and 7 of the Confidential Annex. Bearing these points in mind he invited the DfT to reconsider its position in regard to the names of the originators, and to provide him with a response within 10 working days.
 24. The DfT contacted the Commissioner on 22 June 2009 and informed him that after considering his arguments it was now prepared to disclose the names of the originators.
 25. The DfT contacted the Commissioner on 26 June 2009 and confirmed that the disclosure would be made on that day. However, on the same day it contacted him again and informed him that it had reconsidered its position and was no longer prepared to disclose the names of the originators. It informed the Commissioner that it would provide him with further submissions by no later than 29 June 2009. These further submissions were provided to the Commissioner on that day.
 26. The Commissioner contacted the DfT by telephone on 30 June 2009 and stated that he still did not find its arguments in relation to regulation 13 convincing. Following this the DfT emailed the Commissioner on 1 July 2009 and informed him that in light of his continuing concerns it was seeking the views of the individuals whose names were being withheld. It informed the Commissioner that it intended to respond fully to him by no later than 10 July 2009.

27. In a letter dated 13 July 2009 the DfT provided its final submissions to support its use of regulation 13.

Analysis

Exceptions

Regulation 13

28. Regulation 13(1) provides an exception for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in regulation 13(2) or regulation 13(3) is satisfied.
29. One of the conditions, listed in regulation 13(2)(a)(i) is where the disclosure of the information to any member of the public would contravene any of the principles of the DPA.
30. The full text of regulation 13 can be found in the Legal Annex at the end of this Notice.
31. In this case the DfT is seeking to rely upon regulations 13(1) and 13(2)(a)(i) in order to withhold the names of the originators.
32. The DfT has argued that the disclosure of this information would be in breach of the first data protection principle.
33. In order to reach a view on the DfT's arguments the Commissioner has first considered whether the names of the originators are the personal data of third parties.
34. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:
- from that data, or
 - from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
35. In this case the withheld information consists of the names of individuals, who are employees of a private consultancy firm (Mott McDonald Ltd). These employees are identified as the originators of particular draft versions of the Report. The Commissioner notes that the complainant is already aware of the initials of these individuals. Furthermore, given the nature of the information, the Commissioner believes that the individuals are identifiable from the withheld information. Therefore he is satisfied that it is the personal data of the individuals concerned.
36. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA. This requires that personal data is:

- processed fairly and lawfully, and
- that at least one of the conditions in schedule 2 is met.

The Commissioner has first considered whether the disclosure of the withheld information would be fair.

37. During the course of its engagement with the complainant, and during the Commissioner's investigation of this case, the DfT has applied different arguments to withhold the names of the originators.
38. In the refusal notice the DfT argued that the originators were employees of a private sector company, and as such would not expect their names to be in the public domain. Therefore, disclosure would be unfair.
39. The DfT initially expanded upon this argument to the Commissioner and stated that these individuals were not identified on the Mott MacDonald website. It also noted that whilst the names may appear in the public domain, none were related in the public domain to the Crossrail project. Therefore, the individuals concerned would not expect their names to be identified as the originators of the draft versions of the Report, and as such disclosure would be unfair.
40. On 12 June 2009 the Commissioner contacted the DfT and informed it that he was not convinced by this argument. He pointed out that the names of two of the originators had been linked in the public domain with both Mott MacDonald Ltd and the Crossrail project – including in a document previously disclosed by the DfT under the Act. Further to this he had also found the name of the other originator listed in the public domain as an employee of Mott MacDonald Ltd, and linked with the company's tunnelling activities. Due to the nature of the withheld information in this case the Commissioner does not feel he is able to list where he found the names of the originators in the public domain – as he believes that this would directly lead to the originators being identified. However, further details of where he located this information can be found in paragraphs 1 to 6 of the confidential annex attached to this Notice.
41. In response to this, the DfT informed the Commissioner that it had contacted Mott MacDonald Ltd to see whether the originators consented to the disclosure of their names. Consent had been denied. It acknowledged the Commissioner's arguments that it was theoretically possible to find the names in the public domain, but stated that the only reason the Commissioner had been able to make this link was because he already had access to the withheld names.
42. The DfT also argued that whilst the originators may be publicly known to be connected with the Crossrail project they were not known to be connected to the Report. The draft versions of the Report contained information which was subject to review and assessment, and therefore may not reflect the views of the relevant originator. Information in the final Report, which their names can be associated reflect those views having been correctly assessed and reviewed. Therefore, the DfT argued, disclosing the names of individuals in relation to particular parts of

the draft versions of the Report would be misleading to the public and unfair to the individuals concerned.

43. Furthermore, whilst the individuals had an expectation that their names may be disclosed in relation to the final Report, they had a reasonable expectation that their identities in relation to the emerging views expressed in the draft versions of the Report would not be made public. Therefore, disclosure of the names would be unfair.

44. Finally the DfT argued that although it had previously disclosed the names of some of the originators of a different Crossrail document in relation to a different request under the Act (see paragraph 23 above) this did not set a precedent. It stated that,

“We do not accept any logic which justifies the disclosure of the names of authors/checkers of a specific draft report by reference to an internet link of their names to Mott MacDonald or the Crossrail project. No precedent is set here. Each request should be considered on its own merits and a single instance of disclosure of another report four years ago does not carry any significant persuasive force.”

45. The Commissioner is concerned by the DfT's seemingly haphazard application of regulation 13 in this case. In particular he notes that the DfT initially informed the complainant that the names of the originators were not in the public domain; then argued to the Commissioner that although the names may be in the public domain, they were not linked with the Crossrail project; and finally accepted that, “the individuals are publicly known to be connected with the Crossrail project,” and argued instead that it would not be in their reasonable expectation to be associated with the draft versions of the Report.

46. The Commissioner has gone on to consider each of the DfT's arguments in turn.

47. The DfT has informed the Commissioner that the originators have not consented to their names being disclosed. It has also argued that it was not in their reasonable expectation that they would be connected to views expressed in the draft versions of the Report – and that therefore disclosure would be unfair.

48. The Commissioner is not convinced by these arguments. Whilst he notes that consent has been denied, he does not believe that this, in itself, renders the potential disclosure of the withheld information unfair.

49. Nor is the Commissioner persuaded by the DfT's 'reasonable expectation' argument. He notes that all of the draft versions of the Report are dated after the EIR came into effect on 1st January 2005. Furthermore, the Crossrail project is a major civil engineering project, being carried out across the nation's capital, and affecting a significant number of people. Given these factors the Commissioner believes it would be reasonable for individuals who were drafting reports on the possible route of the tunnels to expect a certain degree of public scrutiny.

50. Further to this, the Commissioner has also noted the timing of the previous disclosure by the DfT under the Act. As noted at paragraph 23 above, this disclosure consisted of a document relating to the Crossrail project, in a similar format to the documents in this case, in which the names of the originators of each version of that document were clearly shown. This disclosure predated all but one of the draft versions of the Report. Whilst he acknowledges the DfT's point that each request should be considered on its own merits, he also believes that the previous disclosure of this information should have had a significant impact on the reasonable expectations of the originators of the draft versions of the Report. The Commissioner has commented further on this at paragraphs 6 and 7 of the Confidential Annex.
51. In relation to this previous disclosure by the DfT the Commissioner also notes that it has provided no evidence that following this disclosure any of the individuals named on that document complained about the disclosure of their names. Nor has the DfT provided him with any evidence that any of the individuals named on that document suffered any prejudicial effect as a result of that disclosure.
52. In addition to this the Commissioner has also noted the nature of the draft versions of the Reports. The DfT has argued that draft versions of the Report contained information which was subject to review and assessment, and which may not reflect the originator's views. However, having considered the drafts the Commissioner notes that they are not written in a personal style, and do not appear to contain personal statements. He also notes that each draft version has been checked and approved by other individuals.
53. The Commissioner is not convinced by the DfT's argument that although the identities of the originators are in the public domain, and associated with Mott MacDonald (and at times the Crossrail project), they are difficult to locate without already knowing the names. The Commissioner has commented on this further at paragraphs 8 to 10 of the Confidential Annex.
54. The Commissioner notes that the DfT's arguments focus on the reasonable expectations of the originators. It has not provided any arguments as to how disclosure of the names would be prejudicial. As noted above, the DfT has not provided any evidence that the members of Mott MacDonald Ltd staff named in the previously disclosed Crossrail document suffered any prejudicial effects as a result of this disclosure. The Commissioner also notes that the DfT did not identify any parts of the draft versions of the Report which were particularly controversial, and would be potentially damaging to an individual's professional reputation if they were to be identified with the drafting of that section.
55. Taking all these factors into account, the Commissioner does not find the DfT's arguments persuasive. He believes that given the timing of the draft versions of the Report – all of which post dated the introduction of the EIR, together with the fact that all but one of the draft versions are dated after a disclosure by the DfT of a similar document in which the names of the originators of that document were disclosed, it should be within the reasonable expectation of the individuals concerned that their names may be disclosed. He also notes that the originators' identities are already publicly linked (to varying degrees) with Mott MacDonald

Ltd, its tunnelling activities, and/or the Crossrail project. Furthermore he notes that the Crossrail project affects a significant number of people, and that there has been considerable debate about the route of the tunnels (which the Report discusses). Finally he notes the nature of the Reports, the fact that although the draft versions are (obviously) a draft, they do appear to have been through a checking and approval process, and the lack of any detailed arguments by the DfT as to how the release of this information would cause harm to the individuals concerned. For these reasons the Commissioner believes that the disclosure of the names of the originators would be fair.

56. As the first principle requires that the processing of personal data is fair and lawful, the Commissioner has considered whether the disclosure of the names of the originators would be lawful. After considering the circumstances of the case the Commissioner does not believe that disclosure of this information would be unlawful. The Commissioner further notes that the DfT did not argue that the disclosure of this information would be unlawful
57. The Commissioner has gone on to consider whether any of the conditions in Schedule 2 can be met.
58. The Commissioner considers that the most applicable condition in this case is likely to be schedule 2(6)(1) of the DPA which gives a condition for processing personal data where:
 - The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
59. In deciding whether this condition would be met in this case the Commissioner has considered the decision of the Information Tribunal in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060]. In that case the Tribunal established the following three part test that must be satisfied before this condition will be met:
 - there must be legitimate interests in disclosing the information,
 - the disclosure must be necessary for a legitimate interest of the public, and
 - even where disclosure is necessary it nevertheless must not cause unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.
60. The DfT has argued that any legitimate interest has already been adequately met by the disclosure of the draft versions of the Report. Therefore, it argues, the disclosure of the names of the originators is not necessary. Furthermore, any slight benefit that might accrue from disclosure would be significantly outweighed by the prejudice to the rights and freedoms of the data subjects.
61. The complainant has argued that,

“...there should be a number of people responsible for signing off documents which should be accurate and consider the public interest test for a public interest project. You will appreciate that if the arguments presented by the DfT for not providing the names were permitted, it could no doubt cast doubt about the authenticity of the information supplied.”

62. After considering the complainant's arguments the Commissioner believes that it can be argued that there is a legitimate interest in knowing the names of the originators as they are responsible for the information used to make decisions affecting a large number of people.
63. The Commissioner notes that the originators are professionals, who have drafted technical reports in order to contribute to the decision making process in a civil engineering project across the nation's capital, affecting a large number of people. He believes that it is a legitimate interest for the names of the professionals who write the report to be known, as that puts a validity on the views expressed therein.
64. In addition to this, the Commissioner also considers that disclosure of the names would assist with transparency and accountability for the decision making process in this major civil engineering project.
65. The Commissioner has not identified any specific harm in releasing the information in this case, and (as noted at paragraph 55 above) he considers that the release of the names would be fair. The Commissioner considers that – given the benefits of transparency and accountability – a legitimate interest arises from the disclosure on request of information by public bodies. More specifically, there is legitimate interest in the public knowing who was responsible for drafting technical reports which helped inform important decisions in this major civil engineering project.
66. In reaching a decision on this, the Commissioner also notes that other than the “misleading” argument by the DfT (referred to at paragraph 42 above), it has not provided any other specific argument as to why disclosure of the withheld information should prejudice to the rights and freedoms of the originators. He also notes that the DfT has provided no evidence that following the previous disclosure of the names of originators on a Crossrail document (see paragraph 23 above), any of those individuals complained about the disclosure of their names. Nor did the DfT argue that this previous disclosure had a prejudicial outcome on any of the individuals concerned.
67. After considering these factors the Commissioner also finds, in this case, that there would be no unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the individuals concerned.
68. Therefore he believes that schedule 2(6)(1) is satisfied.

69. As such the Commissioner believes that the disclosure of the names of the originators would not be in breach of the first principle of the DPA. Therefore he does not believe that regulation 13(1) provides an exception from disclosure.

Procedural Requirements

70. Regulation 14(1) states:

“If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and shall comply with the following provisions of this regulation.”

71. Regulation 14(3) states:

“The refusal shall specify the reasons not to disclose the information requested, including –

- (a) any exception relied on under regulations 12(4), 12(5) or 13; and
- (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).”

72. During the investigation of this case the DfT informed the Commissioner that it sought to rely upon regulations 13(1) and 13(2)(a)(i) to withhold the names of the originators. This exception had not previously been cited to the complainant. In failing to inform the complainant of one of the exceptions it was seeking to rely upon, the DfT failed to meet the requirements of regulation 14(1) – as it had failed to comply with the provision laid out in regulation 14(3)(a) to inform the applicant of any exception relied upon.

73. The full text of regulation 14 can be found in the Legal Annex at the end of this Notice.

The Decision

74. The Commissioner’s decision is that the DfT did not deal with the request for information in accordance with the following requirements of the EIR:

Regulation 5(1) – in that it failed to make available the environmental information requested, to which the complainant was entitled, because it incorrectly cited regulations 13(1) and 13(2)(a)(i).

Regulation 5(2) – in that it failed to disclose this information within 20 working days of receipt of the request.

Regulation 14(1) – in that the DfT failed to meet the requirements of regulation 14(1), by failing to comply with the provision laid out in regulation 14(3)(a), as

during the course of the investigation it sought to rely upon an exception it had not cited to the complainant.

Steps Required

75. The Commissioner requires the DfT to take the following steps to ensure compliance with the EIR:
- disclose the names of the originators of the draft versions of the 2007 Southern Alignment Options Report between Liverpool Street and Whitechapel Stations (A1, B1, C1 and C2).
76. The DfT must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

77. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Other matters

78. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
79. The complaints' requested an internal review on the 27 January 2008. The outcome of the review was communicated to the complaints' on the 29 February 2008, approximately 25 working days later. The Commissioner is concerned to note that the content of the review does not suggest that the authority has thoroughly reconsidered the relevant issues, or provided sufficient detail as to why the original decision was upheld. The Commissioner considers this to be indicative of non-conformity with part XII of the Regulation 16 Code of Practice (EIR).
80. For the purposes of clarity, at the date of issue the internal review was processed in the context of the Freedom of Information Act rather than the EIR. The Commissioner would therefore like to make clear that in the alternative; he would not consider the review to meet the recommendations of part VI of the section 45 Code of Practice, which contains similar provisions to those made in part XII of the EIR.

Right of Appeal

81. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 5th day of October 2009

Signed

**David Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Regulation 5

- (1) Subject to paragraph (3) and in accordance with paragraphs (2), (4), (5) and (6) and the remaining provisions of this Part and Part 3 of these Regulations, a public authority that holds environmental information shall make it available on request.
- (2) Information shall be made available under paragraph (1) as soon as possible and no later than 20 working days after the date of receipt of the request.
- (3) To the extent that the information requested includes personal data of which the applicant is the data subject, paragraph (1) shall not apply to those personal data.
- (4) For the purposes of paragraph (1), where the information made available is compiled by or on behalf of the public authority it shall be up to date, accurate and comparable, so far as the public authority reasonably believes.
- (5) Where a public authority makes available information in paragraph (b) of the definition of environmental information, and the applicant so requests, the public authority shall, insofar as it is able to do so, either inform the applicant of the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling and pre-treatment of samples, used in compiling the information, or refer the applicant to the standardised procedure used.
- (6) Any enactment or rule of law that would prevent the disclosure of information in accordance with these Regulations shall not apply.

Regulation 13

- (1) To the extent that the information requested includes personal data of which the applicant is not the data subject and as respects which either the first or second condition below is satisfied, a public authority shall not disclose the personal data.
- (2) The first condition is –
 - (a) in a case where the information falls within any paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene –
 - (i) any of the data protection principles; or
 - (ii) section 10 of the Act (right to prevent processing likely to cause damage or distress) and in all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it; and
 - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under these Regulations would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data

Protection Act 1998(a) (which relates to manual data held by public authorities) were disregarded.

- (3) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1) of the Act and, in all circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing it.
- (4) In determining whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.
- (5) For the purposes of this regulation a public authority may respond to a request by neither confirming nor denying whether such information exists and is held by the public authority, whether or not it holds such information, to the extent that –
 - (a) the giving to a member of the public of the confirmation or denial would contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of the Act were disregarded; or
 - (b) by virtue of any provision of Part IV of the Data Protection Act 1998, the information is exempt from section 7(1)(a) of the Act.

Regulation 14

- (1) If a request for environmental information is refused by a public authority under regulations 12(1) or 13(1), the refusal shall be made in writing and comply with the following provisions of this regulation.
- (2) The refusal shall be made as soon as possible and no later than 20 working days after the date of receipt of the request.
- (3) The refusal shall specify the reasons not to disclose the information requested, including –
 - (a) any exception relied on under regulations 12(4), 12(5) or 13; and
 - (b) the matters the public authority considered in reaching its decision with respect to the public interest under regulation 12(1)(b) or, where these apply, regulations 13(2)(a)(ii) or 13(3).
- (4) If the exception in regulation 12(4)(d) is specified in the refusal, the authority shall also specify, if known to the public authority, the name of any other public authority preparing the information and the estimated time in which the information will be finished or completed.
- (5) The refusal shall inform the applicant –
 - (a) that he may make representations to the public authority under regulation 11; and

Reference: FS50195062



Information Commissioner's Office

- (b) of the enforcement and appeal provisions of the Act applied by regulation 18.